Supreme Court, U.S.
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89-1862

NO. 89-

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

DANIEL J. McCARTHY, Petitioner,

v.

ROULETTE BLAIR, Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FILED: OCTOBER 5, 1987

ROULETTE BLAIR, Petitioner, v. DANIEL J. McCARTHY, Respondent.	NO. CV 87 -2508-WJR(JR) REPORT AND RECOMMENDATION ON A WRIT OF HABEAS CORPUS BY A STATE PRISONER

This Report and Recommendation is submitted to the Honorable William J. Rea, United States District Judge, pursuant to the provisions of 28 U.S.C. § 636 and General Order 194 of the United States District Court for the Central District of California.

On December 23, 1986, our Ninth Circuit Court of Appeals decided *Carter* v. *McCarthy*, 806 F.2d 1373. *Carter* had plea bargained a two-year sentence but had not been informed by the trial judge that he was subject to an additional three-year mandatory parole term under California Penal Code § 3000(a). The Court held that the mandatory parole

requirement was a direct consequence of the guilty plea and, thus, the plea was therefore involuntary.

In the present case, petitioner entered a plea of guilty with the understanding that he would be placed on probation after receiving no more than one year in the county jail. He was further informed that a violation of probation could result in a prison sentence of up to four years. Petitioner did eventually violate probation, was sentenced to state prison, eventually was paroled, he then violated parole and was returned to state prison, and now is presently on parole again. This Magistrate held an evidentiary hearing on September 30, 1987, at which the petitioner testified that he would not have entered a plea of guilty had he known of the parole requirement. The Magistrate believes that testimony.

The difference between this case and *Carter* is that petitioner would not have been

required to serve a mandatory parole term if he had not violated probation while *Carter* was sure to serve the mandatory parole because he had bargained for a two-year sentence. However, this difference does not compel a different result. Petitioner's plea was not voluntary and intelligent and the trial court's acceptance of the plea was, therefore, a violation of his right to due process. The error was not harmless under *Chapman* v. *California*, 386 U.S. 18 (1967) as petitioner would not have pled guilty had he known of the mandatory parole term.

IT IS THEREFORE RECOMMENDED that the writ be granted and the respondent be directed to release petitioner from any further service under the parole term.

DATED: October 5, 1987.

JOSEPH REICHMANN
United States Magistrate

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FILED OCTOBER 28, 1987

ROULETTE BLAIR, Petitioner, v. DANIEL McCARTHY, Respondent.	NO. CV. 87-2508-WJR (JR) FINAL REPORT AND RECOMMENDATION

This Final Report and Recommendation and the attached Report and Recommendation are submitted to the Honorable William J. Rea, United States District Judge, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and General Order 194 of the United States District Court for the Central District of California.

On October 5, 1987, the Clerk filed a Notice of Filing of Magistrate's Report and Recommendation and Lodging of Proposed Judgment, which was served on the parties,

together with copies of the Magistrate's Report and Recommendation.

Objections were filed on October 20, 1987.

It is therefore the final recommendation of the Magistrate that an Order be issued by the Court (1) approving and adopting the Report and Recommendation and (2) directing that Judgment be entered granting the petition.

DATED: October 27, 1987.

JOSEPH REICHMANN
United States Magistrate

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FILED OCTOBER 28, 1987

ROULETTE BLAIR, Petitioner, v. DANIEL McCARTHY, Respondent.	NO. CV. 87-2508-WJR (JR) ORDER ADOPTING FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE

Pursuant to 28 U.S.C. § 636(b)(1)(B), the Court has reviewed the pleadings and other papers herein, the attached Report and Recommendation of the Magistrate, the Final Report and Recommendation of the Magistrate, and approves and adopts the Magistrate's findings, conclusions and recommendations.

IT IS ORDERED that judgment be entered granting the petition for writ of habeas corpus.

IT IS FURTHER ORDERED that the Clerk shall serve copies of this Order, the Magistrate's Reports and Recommendations and

the Judgment by United States mail on the petitioner and the office of the Attorney General for the State of California.

DATED: 10-27-87

WILLIAM J. REA
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ENTERED OCTOBER 29, 1987

LODGED OCTOBER 5, 1987

FILED OCTOBER 28, 1987

ROULETTE BLAIR, Petitioner, v. DANIEL McCARTHY, Respondent.	NO. CV. 87-2508-WJR (JR) JUDGMENT

IT IS ADJUDGED the petition for writ of habeas corpus is granted and the respondents are directed to release petitioner from any further service under his parole term.

DATED: 10-27-87

WILLIAM J. REA
UNITED STATES DISTRICT JUDGE